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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Plumas)

THE PEOPLE,

Plaintiff and Respondent,

v.

RICK CASEY CHAVEZ,

Defendant and Appellant.

C061949

(Super. Ct. No. CRF0800114)

Defendant Rick Casey Chavez was charged by information on December 18, 2008, with first degree burglary (count 1; Pen. Code, § 459; undesignated statutory references are to the Penal Code); assault with intent to commit rape (count 2; § 220, subd. (a)); sexual battery (count 3; § 243.4, subd. (a)); sexual battery (masturbation) (count 4; § 243.4, subd. (d)); and indecent exposure in an inhabited dwelling house (count 5; § 314, subd. (1)).

After the trial court denied defendant's motion to dismiss the information (§ 995), the information was amended on March 18, 2009, to add count 6, charging assault by force likely

to cause great bodily injury. (§ 245, subd. (a).) Defendant entered an open plea of guilty to count 6 and the other counts were dismissed, with the court advising defendant he could receive a maximum sentence of four years in state prison.

According to the preliminary hearing transcript, which the parties stipulated as the factual basis for defendant's plea, on November 13, 2008, defendant came to the house of the victim's mother-in-law, which the victim was cleaning, and identified himself as a magazine salesman. The victim told him to wait outside, but he entered the house. While she was selecting magazines to buy, he said she was pretty and put his hand on her leg. After she asked him to leave, he pinned her against the kitchen counter, grabbed her by her wrists, grabbed her bare breasts under her shirt, licked and kissed them, and tried to kiss her on the lips. He then took her hand and placed it on his crotch. She pulled away and again asked him to leave. He pressed his crotch against hers, pinned her against the kitchen counter again, made sexual movements, and had her stroke his erect penis with her hand. After the victim yet again told him to leave, he apologized, packed his brochures, and left. Defendant's assault inflicted bruises on several different parts of the victim's body.

On April 24, 2009, the trial court imposed a four-year prison sentence (the upper term), citing defendant's prior misdemeanor convictions in aggravation. The court also imposed a \$200 restitution fine (§ 1202.4, subd. (b)), a second \$200

restitution fine (suspended unless parole was revoked) (\$ 1202.45), a \$20 court security fee (\$ 1465.8), and a \$30 "immediate court needs assessment fee." The court awarded credit for 246 days served (164 days actual time plus 82 days good time/work time).

Defendant filed a timely notice of appeal. He did not obtain a certificate of probable cause.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue of whether amendments to section 4019, effective January 25, 2010, apply retroactively to his pending appeal and entitle him to additional presentence credits. We conclude that the amendments do apply to all appeals pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant is not final"]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying the rule of *Estrada* to amendment

allowing award of custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying *Estrada* to amendment involving conduct credits].) Defendant is not among the prisoners excepted from the additional accrual of credit. (§ 4019, subds. (b), (c); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Consequently, defendant having served 164 days of presentence custody, is entitled to 164 days of conduct credits.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

We have determined, however, that the record needs correction in one other respect. The trial court's sentencing statement and the abstract of judgment fail to specify the statute under which the \$30 "immediate court needs assessment fee" was imposed. Because the record must show the statutory basis for every sentencing fine and fee, we shall remand with directions that the trial court prepare a corrected abstract of judgment citing the statute under which this fee is imposed and forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

DISPOSITION

The matter is remanded to the trial court with directions to correct the abstract of judgment so as to reflect the statutory basis for the "immediate court needs assessment fee" and further to reflect corrected conduct credits and to forward a certified copy of the corrected abstract of judgment to the

Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

_____SIMS_____, Acting P. J.

We concur:

_____HULL_____, J.

_____CANTIL-SAKAUYE_____, J.